

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8352 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

GEMAR @ RAJU SARTANBHAI DESAI

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR HH PATEL ASST. GOVERNMENT PLEADER for Respondent No. 1

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 15/12/1999

ORAL JUDGEMENT

1. On March 9, 1999 the Commissioner of Police, Ahmedabad City, Ahmedabad passed an order in exercise of powers under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 (PASA Act for short) directing the detention of the present petitioner. The detaining authority took into consideration six cases

registered against the petitioner. The detaining authority also considered the statements of the two anonymous witnesses whose identity has not been disclosed by the detaining authority, on the basis of subjective satisfaction arrived at by it regarding the correctness and genuineness of the statements and the fear expressed by the witnesses qua the petitioner. The authority took into consideration the availability of alternative less drastic remedies and ultimately concluded that in order to immediately prevent the petitioner from his dangerous activities detention under the PASA Act is required to be resorted to.

2. The petitioner challenges the detention on various counts by this petition under Article 226 of the Constitution of India. Ms. Kachhava learned advocate for the petitioner has restricted her arguments only to the grounds that the statements of the witnesses were verified by the detaining authority on 9-3-1999 and the order was passed on that very day. She submitted that the detaining authority had no time to consider the genuineness of the fear expressed by the witnesses and the need for exercise of powers under Section 9(2) of the PASA Act. The order therefore suffers from the defect of non application of mind which has resulted into denial of right of making an effective representation to the detenu and the petition therefore deserves to be allowed.

3. Mr. H.H. Patel, ld. A.G.P. appearing for the respondents conceded to the fact that the statements were verified and the order was passed on 9-3-1999 itself. It may be noted that none of the respondents have filed any affidavit in reply.

4. Claiming privilege under Section 9(2) of the PASA Act and not disclosing the identity of the witnesses in exercise of such power in public interest will have a direct bearing on the right/interest of the detenu. The detaining authority there is required to exercise due care and caution while exercising such powers. Such powers are supposed to be exercised after carefully considering the material before it. It is expected of the authority to consider the public interest vis-a-vis the interest of the detenu and strike a balance between the two. This exercise would require some time. In the facts of the present case there was no time lag between the verification of the statements and the passing of the order. No affidavit in reply is filed which could have enabled the Court to know as to what were the factors that were considered by the detaining authority, what material was available with the detaining authority and

when it was considered while exercising powers under Section 9(2) of the PASA Act. In view of the decision in the case of K.C. Kahar v. State of Gujarat as reported in 1993(2) GLR 1659, the order cannot be sustained.

5. The petition therefore required to be allowed on the same ground and the same is allowed. Petitioner be set at liberty forthwith, if not required in any other case. Rule is made absolute. No costs.

(A.L. Dave, J)

(devu)